



Written by [Joe Wolverton, II, J.D.](#) on June 20, 2014

## Judge Considers Rewrite of Missouri Gun Rights Amendment Summary

Some people are so determined to disarm Americans that they are willing to interfere with the electoral process and the republican principle of representative government.

St. Louis Police Chief Sam Dotson and Rebecca Morgan, a member of the Missouri chapter of Moms Demand Action for Gun Sense in America, have filed suit asking a judge to prevent Missouri election officials from sending out absentee ballots that include a constitutional amendment protecting the right to keep and bear arms in the Show Me State.



Although Circuit Court Judge Jon Beetem denied the pair's request for a temporary restraining order on the distribution of the ballots, he did say he would consider ordering a rewrite of the summary of the proposed amendment.

The election that includes the gun rights proposal is set for August 5, but absentee voting is scheduled to begin on Tuesday, June 24.

As drafted by the state legislature, the summary in question asks voters whether they want to amend the state constitution "to include a declaration that the right to keep and bear arms is an unalienable right and that the state government is obligated to uphold that right."

On May 7, the state senate voted 23-8 to approve a bill that would allow voters to consider a proposed amendment to the November general election ballot that would shore up the Second Amendment in the Show Me State. By a vote of 122-31, the state House of Representatives passed the proposal the day before.

The bill, Senate Joint Resolution 36, declares:

That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned.

The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement.

Ironically, the bill does permit the state legislature to infringe upon the right it declared "unalienable" just one paragraph earlier, preserving for itself the power to enact "general laws which limit the rights of convicted violent felons or those duly adjudged mentally infirm by a court of competent jurisdiction."

Supporters of the proposal praised legislators for their effort to protect this fundamental right. "The



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right to keep and bear arms is a fundamental right and has been so since the founding of this country,” state Representative Jay Barnes said, as quoted by the Associated Press.

In another statement, Barnes referred to the heightened threshold the bill would set for any attempt to infringe on the right to keep and bear arms. “It ensures that Second Amendment rights, by subjecting government regulations impacting them to strict scrutiny,” Barnes explains, “[be] given the same protection afforded every other fundamental right in the United States’ and the Missouri Constitution.”

Opponents see the resolution as a solution to a problem that doesn’t exist. “You’re putting people’s lives in jeopardy with this resolution,” said state Representative Stacey Newman. “What problem are you trying to correct with this?”

According to the lawsuit currently pending before the circuit court, the summary of the proposed amendment “implies that the measure is establishing a constitutional right, when one already exists.”

The complaint also claims that the summary “fails to note that the measure would require strict legal scrutiny of any laws restricting gun rights, including those limiting the ability to carry concealed guns.”

Chuck Hatfield, the lawyer who filed the suit, described the ballot summary as “insufficient and unfair.”

“The title says what’s already existing law — it doesn’t tell the voters anything — and then the title ignores all the things that are important, all the things that are actually changing,” Hatfield said, as reported by the *St. Louis Post-Dispatch* online.

Another lawsuit has been filed that also accuses the ballot summary of falling below the necessary standard of “fairness and sufficiency.” This challenge was brought by St. Louis Circuit Attorney Jennifer Joyce and Jackson County Prosecutor Jean Peters-Baker.

Although Judge Beetem denied Hatfield’s motion for a temporary restraining order on the distribution of ballots, he will continue considering the merits of the other parts of the complaint. No expected date was given for the ruling.

State Deputy Solicitor General Jeremiah Morgan argued, the *Post-Dispatch* reports, that the proposed amendment’s declaration that the right to keep and bear arms is unalienable and that the state government is obligated to uphold that right were “substantive changes and thus an appropriate focus of the ballot summary.”

As [The New American has reported](#), the proposed constitutional amendment was sponsored by state Senator Kurt Schaefer. Schaefer is running for state attorney general.

Schaefer remains involved in the fight to protect this measure and the rights it guarantees. The *Post-Dispatch* reports:

Schaefer, who attended the hearing, said afterward that the proposed standard of “strict scrutiny” for gun-rights restrictions would be a significant change. But Schaefer said he believed that was adequately conveyed by the summary’s wording about an “unalienable right” to bear arms.

Missouri’s decision to shore up the rights protected by the Second Amendment is timely. President Obama and the United Nations are working feverishly to enforce a pair of disarmament agreements that will see the seizure of weapons and ammunition from Americans.

Although some argue against the practice, nullification is the safest, surest, and most constitutionally sound way to stop at the state borders all attempted infringements of fundamental liberties, including the right to keep and bear arms.



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Nullification is not, as some have suggested, the right of states to nullify any federal act. Rather, it is the right to choose to not enforce any federal act that fails to conform to the constitutionally established limits on its authority.

Nullification presupposes that there are myriad (albeit limited) areas over which the Constitution has given purview to the federal government: defense, naturalization, foreign relations, interstate commerce, etc.

When Washington decides to go on constitutional walkabout, however, and starts legislating (or issuing edicts, in the case of President Obama) in areas not within its constitutional boundaries (healthcare, education, gun ownership), the states reserve the right to check that usurpation by refusing to afford such acts the power of law.

Conversely, it would be a usurpation on the part of the states should they attempt to disregard federal laws that are constitutionally valid.

In the Kentucky and Virginia Resolutions, Thomas Jefferson and James Madison reminded state lawmakers of the boundaries between states and the federal government established by the Constitution. In those seminal statements they also declared their “warm attachment to the Union of the States.”

They believed, as do many of us involved in the struggle to force the federal beast back inside its constitutional cage, that devotion to the Constitution and to the rule of law compels one to “watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them, can alone secure its existence and the public happiness.”

State legislators have not only a duty, but an oath-bound obligation “to support this Constitution,” that includes restraining the federal government with the chains of the Constitution.

*Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at [jwolverton@thenewamerican.com](mailto:jwolverton@thenewamerican.com).*



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